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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/787,117   | 02/27/2004  | Allan James Becker   | WH-11959US          | 5081             |
| 22807  | 7590        | 10/04/2005           | EXAMINER            |                  |
| GREENSFELDER HEMKER & GALE PC<br>SUITE 2000<br>10 SOUTH BROADWAY<br>ST LOUIS, MO 63102 |             |                      | THOMPSON, HUGH B    |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3634                |                  |

DATE MAILED: 10/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

*ke*

**Office Action Summary**

Application No.

10/787,117

Applicant(s)

BECKER, ALLAN JAMES

Examiner

Hugh B. Thompson II

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application:
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☒ Claim(s) 3-7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6-29-05</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 1, line 3, there is no antecedent basis for “the length of the ladder”.

With respect to claim 1, line 4, there is no structure associated with “a protected U”.

With respect to claim 2, the applicant has positively recited the combination of the component and the ladder. It is suggested the applicant use the phrase “adapted to” when referring to unclaimed elements such as the ladder rung.

With respect to claims 8 and 9, it is unclear as to whether or not the claim is an independent claim. Note that the applicant claims the combination of the ladder and the cage, and in claim 9, the preamble is drawn to the combination.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Russo #4,524,848. Russo, as best seen in Figures 1, 2, and 4, and recited in column 4, lines 9-14, discloses a safety cage assembly 30, attachable to a ladder 20 and positionable at any point therealong, the assembly having section components 32, 34, the components attached along vertical splits by means of fasteners 64, and at fastening axes 60, this arrangement serving as a releasable mechanical securement to ladder side rails 24, 26, and between the components.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Russo as applied to claims 1 and 2 above, and further in view of Lazarus #5,350,038. Russo fails to disclose a ladder having U-spaced rails with flanged ends and holes spaced along the rails. Lazarus, as best seen in Figures 4, 9, teaches the utility of ladder 10 having U-shaped flanged side rails 236, 238, 240, 242 and spaced holes/rung ends 26, this assembly permitting a light weight ladder that can be extended for varying heights.

Therefore, to one of ordinary skill in the art, it would have been obvious, as a matter of design choice, to provide the assembly of Russo with a ladder as taught by Lazarus, so as to permit a light weight ladder that can be extended for varying heights.

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*Allowable Subject Matter*

Claims 3-7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The primary reason for the allowable subject matter for claim 3 is the inclusion of the free edge having a hook so as to hang the component from a ladder rung.

*Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kohlmeier et al #6,929,094, Thiessen #6,899,201, Hay #2,539,664, Ray #3,106,986, Brenner #4,211,306, Coutier #4,664,225, and Warren #6,607,053 are cited to teach ladder and safety cage assemblies.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hugh B. Thompson II whose telephone number is (571) 272-6837. The examiner can normally be reached on Monday thru Friday 9 am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Hugh B. Thompson II  
Primary Examiner  
Art Unit 3634

September 29, 2005